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Remarks

I. Status of the Claims

Claims 1-132 were previously canceled without prejudice or disclaimer, and claims 133-139 and 147-153 are canceled herein without prejudice or disclaimer. Claims 140-146 are the only pending claims.

II. Petition to Make Special

The present cancellation of claims 133-139 and 147-153 in no way affects the Petition to Make Special filed in the instant application on February 27, 2004 ("Petition"). Specifically, Applicant notes that the basis for the Petition was Applicant's knowledge of a product currently on the market which Applicant believes would infringe the claims of the instant application, as amended in the Second Preliminary Amendment filed with the Petition on February 27, 2004. Applicant points out that in support of this belief, a Claim Chart was attached as Exhibit C to the Petition, wherein a rigid comparison of the proposed infringing product to claim 146 of the application was made. Applicant notes that since claim 146 has not been canceled or amended by this paper, the comparison of the product with the claim, and likewise Applicant's basis for requesting the Petition, remains unaffected.

III. Interview

Applicant would like to thank the Examiner for the courtesies extended to her personal representatives, Tom Irving, Thalia Warnement, and Michelle O'Brien, at the March 23, 2004, personal interview.

IV. Full Story™ Lush lash and MagnaScopic® Mascara Products

As referenced in the Information Disclosure Statement filed on February 27, 2004, and as discussed at the March 23, 2004, personal interview, Applicant is aware of the ingredients of both the Origin's Full Story™ Lush lash and the Estée Lauder MagnaScopic® mascara products. See Exhibit 1 for Full Story™ Lush lash packaging; see Exhibit 2 for MagnaScopic® packaging. However, to the best of Applicant's representatives' knowledge, these two products were launched in 2003, and thus do not constitute prior art with respect to the present application.

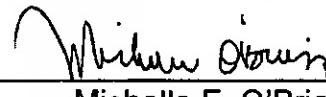
V. Conclusion

In view of the foregoing amendments and remarks, Applicant respectfully requests consideration of the application and timely allowance of the pending claims.

Please grant any extensions of time required to enter this Third Preliminary Amendment and charge any fee due in connection with the filing of this Third Preliminary Amendment to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON,
FARABOW, GARRETT & DUNNER, L.L.P.

By: 
Michelle E. O'Brien
Reg. No. 46,203

Dated: April 1, 2004

Attachments:

Exhibit 1 - Origin's Full Story™ Lush lash mascara packaging

Exhibit 2 - Estée Lauder's MagnaScopic® mascara packaging

EXHIBIT 1

Origin's Full Story™ Lush lash mascara packaging

Purchased 16 Jan 04
Orkla's Stores Premium

The Origins Commitment: Preservation of earth, animal, environment.

This carton was made from 20% post-consumer recycled material.
Cet étui est fait de 20% de matériaux de récupération recyclés.

ORIGINS

Lush-Lash mascara/Mascara épaisissant
.27 fl. oz./oz.liq./8 ml E

Ingredientes: aquae (water, aqua purificata, purified) infusoria; rosa damascena (rose), anthemis nobilis (chamomile), leoddodane • ethylenediamine/stearyl dimmer ester, but copolymer, kaolin, sinomenium stearinum • stearamide meat-stearate, polyisobutene-1, allica • sorbitan tristearate, pvp • panthenol, tocopherol acetate, glycerin, tocopherol, butylene glycol, diglycidylmethacrylate/stearyl copolymer, stearic acid, acacia senegal gum, magnesium aluminum silicate, hydroxyethylcellulose, citric acid, disodium edta, benzyl alcohol, potassium sorbate, sorbic acid, glyceryl stearate, peg-100 stearate, decylsorbitol pentacaprylate, hydroxymethylpropanoate, citric acid, propylparaben, butylparaben, ethylparaben, propylparaben, butylparaben, hydroxypropylparaben, may contain: mica, titanium dioxide (d 7789), iron chlorophane, phenoxethanol, methylparaben, ethylparaben, citric acid, ferric ferrocyanide (d 7751), ultramarines (d 7702), blue 1 lake (d 42800), barium oxychloride (d 7713), chromium dioxide (d 7726), yellow 5 lake (d 19140). In 23617

081X-01
A73 9
Made in Canada
17334 08293

Fall Scary™ Lash-lash mascara/La Totale Mascara épaisissant
Ophthalmologically tested.
Caution! In case of eye irritation, discontinue use and see your ophthalmologist.
Testé ophtalmologiquement.
Attention! En cas d'irritation de l'œil, suspendre l'utilisation et consulter immédiatement un ophtalmologue.
Achtung! Falls Augenirritation auftritt, nicht mehr anwenden.

EXHIBIT 2

Estée Lauder's MagnaScopic® mascara packaging

896716

MADE IN CANADA 1T4F-01
8 027131270546

ATTENZIONE: In caso di irritazioni, infezioni o screpolature sospendete l'uso di tutti i cosmetici per occhi e consultate l'oculista. Testato oftalmologicamente. Privo di fragranza.

PRECAUCIÓN: En caso de irritación, infección o picor suspenda el uso de todo cosmético de ojos y consulte inmediatamente con su oftalmólogo. Probado oftalmológicamente. Sin fragancia.



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ESTEE LAUDER DIST. NEW YORK, N.Y. 10022 LONDON W1K 3HQ ITAFR www.estee lauder.com

INGREDIENTS: WATER/AQUA PURIFICATA/PUREWATER•ISODODECANE•ETHYLENDIAMINESTEARNOL OMEG-1 ALATE COPOLYMER•CYCLOMETHICONE•KARUN-STEARIC ACID•STEARANIC MEA•STEARATE•
ALUMINUM SHELLACATE•POLYSORBATE 20•SILICA•SORBITAN TRISTEARATE•GLYCERIN•STEARATE•MAGNESIUM ALUMINUM SILICATE•HYDROXYCELLULOSE•PVP•
TOCOPHEROL ACETATE•ACACIA SENEGAL GUM•PITTE COFFEA ARABICA COFFEE SEED EXTRACT•PANTOTHENIC ACID•POLYPEPTIDE•HYDROLYZED JOJOBA PROTEIN•SULFAMINO ACIDS•ANHYDRO
METHYL PROPANOIC PROPENE GLYCOL•TETRAISOBUTYL PENTADECYLTRITYL HYDROXYHYDROCARYNATE•ISOPROPYL ALCOHOL•DISODIUM EDTA•QUATERNIUM 15•CHLORPHENESIN•SODIUM ACID•
MICA•TITANIUM DIOXIDE (CI 77019)•FERRIC FERROGANE (CI 77400)•ALUMINUM POWDER (CI 42050)•BLUE 1 LAKE (CI 42090)•BLUE 1 (CI 19140)•YELLOW 5 (CI 19140)•
YELLOW 5 LAKE (CI 77289)•CHROMIUM OXIDE GREEN (CI 77470)•CHROMIUM HYDROXIDE GREEN (CI 77233)•BISMUTH OXIDE (CI 77001)

1T4F-
01-
0113

MagnaScopic
Maximum Volume
Mascara
Mascara
volume intense

NET WT.
3 OZ./9ml ©

CAUTION: In case of eye irritation, infection or scratches, discontinue use of all eye cosmetics and see your ophthalmologist at once.

Ophthalmologist-tested. Fragrance-free.

PRECAUTION DE L'EMPLOI : En cas d'irritation des yeux, d'infection ou de démagéances, interrompre l'utilisation de tout produit cosmétique pour les yeux et consulter votre ophtalmologue au plus tôt. Soumis à des tests ophtalmologiques. Sans parfum.

ACHTUNG: Bei Auftreten von Irritationen oder Infektionen am Auge Anwendung jeglicher kosmetischer Produkte für die Augenpartie absetzen und einen Arzt aufsuchen. Augenärztlich getestet. Duftfrei.



ESTÉE LAUDER